

**TEXAN 2000 SALES
AGREEMENT
BETWEEN
THE STATE OF TEXAS, GENERAL SERVICES COMMISSION
AND
SOUTHWESTERN BELL TELEPHONE CO.
GSC Contract No. TEXAN 2000 – SWB – EPI**

This TEXAN 2000 Sales Agreement (the "Agreement") is made and entered into by and between the The State of Texas, General Services Commission, a state agency whose address is 1711 San Jacinto, Austin, Texas 78701 (the "GSC") and Southwestern Bell Telephone Co. ("Contractor"), a Missouri corporation, with offices at 175 E. Huntland, Austin, TX 78215.

The GSC is authorized to enter this Agreement pursuant to the Chapter 2170 of Title 10, Subtitle D of the Texas Government Code. In consideration of the mutual covenants and agreements, herein contained, the parties hereto agree to the following:

**ARTICLE I.
CONTRACT DOCUMENTS**

This Agreement and the documents, listed below, together constitute the Contract and shall be referred to as the Contract Documents. The referenced documents are as follows:

- 1) Request for Offer Number 99-TELE-2000 including all addenda (the "RFO"), Exhibit A hereto;
- 2) Contractor's Response to the RFO, Exhibit B hereto;

- 3) The Best and Final Offer (BAFO) for 99-TELE-2000, Exhibit C hereto;
- 4) Contractor Response to BAFO, Exhibit D hereto;
- 5) Contractor's post-BAFO submissions, Exhibit E hereto;
- 6) Clarification Document and its attachments, Exhibit F hereto; and
- 7) HUB Participation Information, Exhibit G hereto.

This Agreement shall be construed wherever possible to avoid conflict between and among the Articles hereof and the Exhibits hereto. Where a conflict cannot be avoided, the following descending order of precedence shall be observed in determining which of the Contract Documents contains the controlling provision::

- 1) This Agreement;
- 2) Exhibit G;
- 3) Exhibit F (as to particular goods or services);
- 4) Exhibit E;
- 5) Exhibit D;
- 6) Exhibit C;
- 7) Exhibit B; and
- 8) Exhibit A.

Exhibits A – E and G are on file in the Central Procurement Division of GSC.
Exhibit F is an attachment to this Agreement.

ARTICLE II.

DEFINITIONS

- A. "Qualified Ordering Entities" or "QOE" means the GSC, other Texas State agencies and qualified political subdivisions of the State of Texas, as specified in the Exhibit F (Clarification Document). The parties to this Agreement reserve the right to amend this definition to facilitate use by other states and their agencies, consistent with Texas SB 1127, Acts of the 76th Legislature, effective June 18, 1999.

- B. "Purchase Order" means the document issued by a QOE which specifies the quantity of goods and/or services to be provided by Contractor and as agreed to by Contractor under this Agreement (collectively, "Goods and Services"), as more particularly described in Exhibit F (Clarification Document). The terms and conditions of a Purchase Order govern the sales transaction between that QOE and the Contractor only as to the type, number, price and delivery and installation terms for the Goods and Services. To the extent the Purchase Order has other, preprinted provisions which are inconsistent with the Contract Documents, the Contract Documents prevail.
- C. "Clarification Document" means a document created by Contractor and approved by GSC, which is consistent with Contractor's Response to the 99-TELE-2000 RFO, the BAFO and post-BAFO submissions, and which sets out clearly and concisely the scope of Goods and Services to be provided under this Agreement. The Clarification Document is Exhibit F to this Agreement.
- D. "Affiliate" means an entity which controls, is under the control of, or under common control with Contractor, through ownership or by contract.
- E. "User" means the individual officers, employees, contractors and agents of a QOE who are authorized by the QOE to use the Goods and Services available under this Agreement.

ARTICLE III.

GLOBAL SALES AGREEMENT

- A. During the term of this Agreement, Contractor agrees to accept Purchase Orders from QOEs for any of the Goods and Services specified in Exhibit F

reasonable precautions to prevent unauthorized use of the software and features or disclosure of the software manufacturer's proprietary trade secret information. The QOEs acknowledge that the software manufacturer retains title to the software (excluding media on which recorded) and all intellectual property rights, with the exception of the license conveyed herein and no title to software or intellectual property rights are transferred to the QOEs.

ARTICLE VII.

WARRANTIES

A. From Contractor:

Limited Warranties shall apply to all ordered Goods and Services, as stated in the applicable Clarification Document(s) and shall be for the period stated in the Clarification Documents.

B. From QOEs:

1. In ordering Goods and Services under this Agreement, the QOEs assure GSC and Contractor that its and its Users' use of the Goods and Services will at all times comply with applicable laws, regulations and written and electronic instructions for use. Contractor reserves the right to terminate Goods and Services for cause in the event QOEs or the related Users fail to comply with applicable laws, regulations and instructions for use.

2. Goods and Services ordered under this Agreement shall only be used for official business of the QOE. Each QOE is responsible for the lawful use of Goods and Services obtained under this Agreement.

ARTICLE VIII.

LIMITATION OF LIABILITY

Applicable limitations of liability which may apply to specific Goods and Services are as set out in Exhibit F (Clarification Document). **IN NO EVENT SHALL SWBT BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.**

ARTICLE IX.

REMEDIES

A. Termination for Cause. If any party at any time commits any material breach of any covenant, warranty, or provision of this Agreement or a Purchase Order arising hereunder and, having been given the opportunity to correct, fails to cure any such breach within thirty (30) days after written notice thereof, the other party may, at its option, and in addition to any other remedies available to it at law or equity, cancel and terminate the Purchase Order by notice in writing to the breaching party. Only GSC and the Contractor may terminate the Agreement for cause, effective thirty (30) business days after receipt of written notice. Where the breach is related to nonpayment by a QOE, Contractor will use reasonable efforts to advise GSC and the Contractor will cooperate with GSC and the QOE in an attempt to resolve any bona fide dispute that is the basis of the non-payment.

B. Termination for Convenience. QOEs may terminate a Purchase Order arising under this Agreement upon seven (7) business days written notice to Contractor. QOEs shall remain responsible and liable for payment for Goods and Services received prior to the effective date of termination. Only GSC and Contractor may terminate the Agreement for convenience, effective thirty (30)

business days after receipt of written notice. The covenant of payment for Goods and Services received survives termination of this Agreement and/or a related purchase order.

ARTICLE X.

NOTICES

Except as otherwise specifically provided in Exhibit F (Clarification Document) for telephonic notices, all notices required to be given under this Agreement shall be in writing and either mailed by certified or registered mail, postage prepaid return receipt requested, sent by express courier, facsimile transmission or electronic means, with hard copy receipt, or hand delivered and addressed to each party at the address set forth on the front of this Agreement or, if the notice relates to a specific Purchase Order, the address set forth in such Purchase Order, or, in any case, such other address a party designates in writing.

ARTICLE XI.

HISTORICALLY UNDERUTILIZED BUSINESS PARTICIPATION

Pursuant to Chapter 2161 of the Texas Government Code, the state agency QOEs are required to make a good faith effort to assist Historically Underutilized Businesses ("HUBs") in receiving a portion of the total value of all contract awards issued by the QOEs. Therefore, Contractor shall be required to make a good faith effort to assist HUBs in receiving a portion of the total value of subcontracts that Contractor awards under this Agreement. To make such a good faith effort, Contractor at a minimum must as a condition of award and before execution of this sales agreement submit Good Faith Effort Program forms and documentation and report subcontracting participation after contract execution. Failure to submit HUB subcontracting data will result in revocation of

any contract awarded because of noncompliance. Existing contracts that the Contractor may have for commodities or services will not preclude efforts on the Contractor's part to include HUBs in sub-contracting opportunities. Should any subcontracting occur, the Contractor shall be held responsible for any work performed by the subcontractor and that the subcontractor comply with all parts of this specification including all insurance requirements. The HUB subcontracting participation forms are a part of Exhibit G (HUB Participation Information).

ARTICLE XII.

PAYMENT

- A.** Payment for Goods and Services are due by the thirtieth (30th) day after:
 - 1) the date of completed work under the related purchase order;
 - 2) the date of acceptance of ordered goods under the related purchase order; or
 - 3) the date of receipt of a correct and complete invoice, whichever is later.
- B.** Penalties for late payment are as set out in Chapter 2251, Texas Government Code.
- C.** The QOE's are not subject to the assessment or payment of federal, state and local sales and excise taxes.
- D.** Invoices must contain, at a minimum: this Contract number; the number of the Purchase Order to which the invoice relates; description of the Goods and Services provided pursuant to the Purchase Order; V.I.D, other vendor identification information as specified in the Purchase Order.

ARTICLE XIII.

MISCELLANEOUS

- A. Vendor Performance.** QOE shall report to GSC any instances of vendor non-performance under this Agreement, pursuant to 1 TAC Chapter 113, Subchapter F.
- B. Access.** GSC and QOE, as appropriate, will provide SWBT reasonable access to all premises at reasonable hours for the purpose of installing, inspecting, testing, rearranging, maintaining, repairing or removing the Services. SWBT will use reasonable efforts to avoid disrupting normal business activities to the extent possible.
- C. Entireties.** This Agreement supersedes any and all prior agreements, representations, or promises made by the parties that differ in any way from the terms and conditions stated herein.
- D. Strict Performance.** Failure at any time to require strict performance by either party of any Agreement provisions shall not waive or diminish GSC's right thereafter to demand strict compliance with any other Agreement provision.
- E. Amendments, Modifications or Changes.** No amendments, modifications or changes to this Agreement shall be made except by a writing signed by the Contractor and GSC.
- F. Assignment.** Neither party shall assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other, except for assignments to affiliates and successors, for which no consent is required. Said consent shall not be unreasonably withheld.
- G. Force Majeure.** Neither Contractor nor a QOE shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes,

acts of civil or military authority, wars, acts of God, acts or omissions of carriers or suppliers, which are not acting as affiliates under this Agreement, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control, whether or not similar to the foregoing, except that a QOE's obligation to pay for Goods and Services received shall not be excused.

- H. Legislative Appropriation.** This Agreement is subject to legislative appropriation and, if no funds are appropriated for payment of this Agreement, this Agreement may be canceled either in whole or part, without penalty to the GSC with thirty (30) days written notice to Contractor, provided GSC and/or QOEs shall pay for all Goods and Services delivered before the effective date of cancellation.
- I. Severability.** If any provision(s) of this Agreement shall be invalid or unenforceable, such provisions shall not invalidate or render unenforceable the entire Agreement. The entire Agreement shall be construed as if the invalid or unenforceable provision(s) were not included in the Agreement.
- J. Subcontracting.** During the term of this Agreement, contractor shall not subcontract any additional services to be provided pursuant to this Agreement without obtaining approval from GSC, except for such subcontracting specifically contemplated by this Agreement. In no event will any subcontracting by Contractor relieve Contractor from any of the obligations to perform in accordance with this Agreement.
- K. Governing Law.** This Agreement will be construed and all disputes hereunder will be settled under the laws of the State of Texas.
- L. Sovereign Immunity.** Nothing herein shall constitute waiver by the State of Texas of its sovereign immunity. Nothing herein shall be construed to extend sovereign immunity status to other QOEs, which do not otherwise enjoy that

privilege as a matter of law. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by GSC and state agency QOE's and Contractor to attempt to resolve all disputes arising under this Agreement, and each Purchase Order issued pursuant hereto.

M. Compliance with Laws. This Agreement shall be subject to all applicable laws, court orders, rules and regulations.

N. Binding Effect. The execution of this Agreement by the authorized representatives of the parties shall have binding effect on the entity, its employees, agents, successors and assigns.

O. Open Records Act; Proprietary Information. The parties acknowledge that this Agreement and all information, documentation, and other material pertaining to this Agreement may be subject to public disclosure under the Texas Public Information Act, Chapter 552.001, et seq., Tx. Gov. Code. GSC shall be governed by the Act and the opinions of the Office of the Attorney General with regard to the administration of this Agreement and compliance with the Act, and will provide SWBT with notice of any request for such information.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to be effective on the date of the last party to sign.

GENERAL SERVICES COMMISSION

**SOUTHWESTERN BELL
TELEPHONE COMPANY**

BY: _____

BY: _____

Charles H. Trammell

TITLE: _____

TITLE: _Regional Vice President_

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Office of General Counsel

Fiscal Management

ATTACHMENT B TO THIRD AMENDMENT AGREEMENT

Exhibit H

To TEXAN 2000 – SWB – EPI

Additional Terms and conditions to TEXAN 2000 – SWB – EPI, as amended.

- 1. Article II of the Contract is amended to add the following additional term:**

F. “Contract Administrator” means the individual appointed by DIR to administer this Contract on behalf of the State of Texas and the authorized QOEs.

- 2. Article III of the Contract is amended to add paragraphs E. and F. as follows:**

E. Price Guarantees

For orders received for single units, vendor shall apply the discount and/or pricing as stated in this Agreement, as amended. For orders larger than one unit, vendor and QOEs may negotiate quantity price discounts below the discounts and/or pricing as stated in this Agreement, as amended.

F. Administrative Fee

The Administrative Fee shall be included in the charges for the Goods and Services set forth in Exhibit F, the Clarification Document, on the website and quoted to QOE. Contractor's obligation to pay such amounts shall be suspended to the extent that its payment or collection violates any state or federal laws.

Contractor will pay DIR, on a monthly basis, the Fee based on a percentage of the sales price of Contractor sales to QOEs pursuant to this Contract. Payment is due based on sales, net of returns and credits. Contractor will provide payment to DIR five (5) business days after the end of each month. The Administrative fee is based on 1% of each sale of CISCO Products and 2% of each sale of all other manufacturers' products.

- 3. Article XIII of the Contract is amended to add paragraphs P. through KK. as follows:**

P. Records and Audit.

- a) Contractor shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audit or litigation issues that arise under this Contract. Such records shall include documentation of the date each QOE placed an order, identification of the ordering QOE, the product and quantity ordered, including the name of the product and the publisher or manufacturer of the product, the price quoted to the QOE for such order, the QOE purchase order number, the order date, ship date, MSRP, shipping address, the invoice sent to the QOE relating to the order, the record of QOE payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract and such other documentation as DIR may require.
- b) Contractor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Contractor without charge. DIR shall provide Contractor ten business days' notice prior to inspecting, auditing and/or copying Contractor's records. Contractor's records, whether paper or electronic, shall be made available during regular office hours. Contractor personnel familiar with the Contractor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Contractor shall provide adequate office space to DIR staff during the performance of an audit.
- c) If any inspection or audit performed hereunder reveals an aggregate overcharge to QOEs of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.
- d) In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to Contractor on behalf of a QOE and the amount Contractor calculates DIR's administrative fee provided for such QOE, the amount reflected by the Comptroller of Public Accounts shall be presumed correct unless

Contractor can demonstrate to DIR's satisfaction that Contractor's calculation of DIR's administrative fee is correct.

- Q. **Web Site Maintenance.** Contractor agrees to maintain and support an Internet website with Product pricing, configuration assistance, Product descriptions and Product specifications. Pricing on the Internet website shall include the DIR Administrative Fee.
- R. **Change In Contractor Representatives.** Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Contract. DIR reserves the right to request a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the DIR, serving the needs of the State of Texas and the QOEs adequately.
- S. **Confidentiality.** Contractor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Contractor also acknowledges that DIR will comply with the Public Information Act and with all opinions of the Texas Attorney Generals' office concerning this Act.

Under the terms of this Contract DIR may provide Contractor with information related to DIR QOEs. Contractor shall comply with all DIR Privacy Policy Guidelines, including, but not limited to, the requirement that Contractor shall not re-sell or otherwise distribute or release to any party in any manner DIR or QOEs' information.

- T. **FCC Certification.** Contractor agrees that machines supplied by Contractor comply with applicable FCC regulations.
- U. **Survival.** Warranty and Service agreements that were entered into between Contractor and a QOEs under the terms and conditions of this Contract shall survive the termination of this Contract.
- V. **Notification.** Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

<u>To DIR:</u> Bill Peek P.O. Box 13564 Austin, Texas 78711	<u>To Contractor:</u>
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Either party may change its representative or address above by written notice.

W. Administration Reporting and Fees. Contractor agrees to provide monthly Contract utilization reports to the Contract Administrator in accordance with the following schedule. The reports will be due five business days after the end of each month.

- a) A monthly report shall state the sales under the contract for the period. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated Administrative Fee.
- b) A detail sales report will be issued monthly that includes no less than each QOE, Order Date, Ship Date, Manufacturer, Quantity, QOE Price, Extended Price, MSRP, QOE Purchase Order Number, Shipping Address, and other information as required by DIR.
- c) Reports as required by DIR that will reflect the amount of work being subcontracted to Historically Underutilized Businesses, as defined by Texas State law.

All reports are to be submitted electronically as defined by DIR.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the Contract or termination of the Contract for cause. Contractor's liability for any breach of this Section shall not under any circumstances exceed the amount of Administrative Fees owed to DIR by Contractor.

X. Contractor Certifications . Contractor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under § 31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; and (v) during the term of this Contract, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

Y. DIR Logo. Contractor may use the DIR logo in the promotion of this Contract to QOEs with the following stipulations:

- a) The logo may not be modified in any way;
- b) When displayed, the size of the DIR logo must be equal to or smaller than the Contractor logo;
- c) The sole use of the DIR logo will be to communicate the availability of Software and Services available under this Contract to QOEs; and
- d) Any other use of the DIR logo requires prior written permission from DIR.

Z. Technology Access, as required by § 2157.005, Texas Government Code. The Contractor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Contractor represents and warrants to DIR and each QOEs purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts

used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

- AA. Commodity Software.** Texas Government Code, § 2157.068 requires State Agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Contractor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available.
- BB. Dispute Resolution.** The dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used to attempt to resolve any claim for breach of contract made by the Contractor that is not resolved in the ordinary course of business.
- CC. Preference to Texas Products.** Vendor agrees to comply with Sections 2155.444 and 2155.4441, Texas Government Code.
- DD. Training.** The Contractor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin area at times acceptable to DIR.
- EE. Ability to Conduct Business in Texas.** The Contractor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.
- FF. Payment of Debts owed the State.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, in accordance with § 403.055(h), Texas Government Code, any payments Contractor is owed under this Contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

**Amendment No. 3
To
Contract No. TEXAN 2000-SWB-EPI
Between
State of Texas, acting by and through the Department of Information Resources,
successor agency to the General Services Commission
("DIR")
And
Southwestern Bell Telephone Co.**

This Amendment No. 3 to Contract No. TEXAN 2000 – SWB – EPI, is by and between the Department of Information Resources (DIR) as successor agency to the General Services Commission (GSC) and Southwestern Bell Telephone Co. (SWB) and is effective as of the date of the last signature below (3rd Amendment Effective Date).

WITNESSETH:

WHEREAS the State of Texas, acting by and through the General Services Commission and SWB entered into GSC Contract No. TEXAN 2000 – SWB – EPI dated August 31, 1999 (the "Agreement"); and

WHEREAS, the Agreement was amended by Amendment 1, dated February 14, 2000 and Amendment No. 2, dated June 29, 2000; and

WHEREAS, by Act of the Texas Legislature effective September 1, 2001, the authority, duties and responsibilities for telecommunications for the State of Texas transferred from GSC to the Department of Information Resources (DIR), including all vendor contracts; and

WHEREAS, as part of the Agreement SWB is to provide certain equipment sales to qualified ordering entities authorized to participate in DIR's vendor contracts; and

WHEREAS, DIR and SWB now wish to enter into this Amendment No. 3 to provide updated pricing on equipment to be provided by SWB, as defined, and to modify certain terms and conditions to bring the Agreement into conformance with DIR's other vendor contracts.

NOW THEREFORE, DIR and SWB agree as follows.

1. Attachment A to this Amendment No. 3 is approved as the terms and conditions of the equipment which may be ordered from SWB by DIR, other state agencies and QOEs, as defined in the Agreement. Attachment A to this Amendment No. 3 is to be added to Contract No. TEXAN 2000-SWB-EPI as Amended Exhibit F (Equipment Pricing). It is the intent of the parties to substitute pages within the Contract for ease of administration. 2. Attachment B to this Amendment No. 3 is approved as the additional terms and conditions under which Contract No. TEXAN 2000 – SWB – EPI will be administered from and after the 3rd Amendment Effective Date. Attachment B - Exhibit H to Contract No. TEXAN

2000 – SWB – EPI – is to be added to Contract No. TEXAN 2000 – SWB – EPI as Exhibit H for ease of administration.

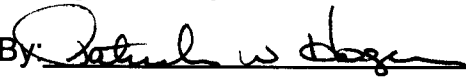
3. The terms and the conditions of the Agreement, as amended, shall apply except as expressly amended in Sections 1 and 2 above of this Amendment No. 3. In the event of any conflict between the Agreement and this Amendment No. 3, the order of precedence for governance is this Amendment No. 3, Amendment No. 2, Amendment No. 1 and the Agreement. All other provisions of the Agreement not expressly amended hereby remain in full force and effect.

IN WITNESS WHEREOF, we hereby execute this Amendment No. 3 to be effective upon the date of the last party to sign.

State of Texas, acting by and

Southwestern Bell Telephone Company

through the Department of Information Resources

By: 

By: 

Name: Patrick W. Hogan

Name: James N. Shelgren

Date: 11-01-01

Date: 11.01.01

ATTACHMENT B TO THIRD AMENDMENT AGREEMENT

Exhibit H

To TEXAN 2000 – SWB – EPI

Additional Terms and conditions to TEXAN 2000 – SWB – EPI, as amended.

1. Article II of the Contract is amended to add the following additional term:

F. “Contract Administrator” means the individual appointed by DIR to administer this Contract on behalf of the State of Texas and the authorized QOE.

2. Article III of the Contract is amended to add paragraphs E. and F. as follows:

E. Price Guarantees

For orders received for single units, vendor shall apply the discount and/or pricing as stated in this Agreement, as amended. For orders larger than one unit, vendor and QOE may negotiate quantity price discounts below the discounts and/or pricing as stated in this Agreement, as amended.

F. Administrative Fee

The Administrative Fee shall be included in the charges for the Goods and Services set forth in Exhibit F, the Clarification Document, on the website and quoted to QOE. Contractor's obligation to pay such amounts shall be suspended to the extent that its payment or collection violates any state or federal laws.

Contractor will pay DIR, on a monthly basis, the Fee based on a percentage of the sales price of Contractor sales to QOE pursuant to this Contract. Payment is due based on sales, net of returns and credits. Contractor will provide payment to DIR five (5) business days after the end of each month. The Administrative fee is based on 1% of each sale of CISCO Products and 2% of each sale of all other manufacturers' products.

3. Article XIII of the Contract is amended to add paragraphs P. through KK. as follows:

P. Records and Audit.

- a) Contractor shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audit or litigation issues that arise under this Contract. Such records shall include documentation of the date each QOE placed an order, identification of the ordering QOE, the product and quantity ordered, including the name of the product and the publisher or manufacturer of the product, the price quoted to the QOE for such order, the QOE purchase order number, the order date, ship date, MSRP, shipping address, the invoice sent to the QOE relating to the order, the record of QOE payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract and such other documentation as DIR may require.
- b) Contractor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Contractor without charge. DIR shall provide Contractor ten business days' notice prior to inspecting, auditing and/or copying Contractor's records. Contractor's records, whether paper or electronic, shall be made available during regular office hours. Contractor personnel familiar with the Contractor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Contractor shall provide adequate office space to DIR staff during the performance of an audit.
- c) If any inspection or audit performed hereunder reveals an aggregate overcharge to QOEs of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.
- d) In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to Contractor on behalf of a QOE and the amount Contractor calculates DIR's administrative fee provided for such QOE, the amount reflected by the Comptroller of Public Accounts shall be presumed correct unless

Contractor can demonstrate to DIR's satisfaction that Contractor's calculation of DIR's administrative fee is correct.

- Q. **Web Site Maintenance.** Contractor agrees to maintain and support an Internet website with Product pricing, configuration assistance, Product descriptions and Product specifications. Pricing on the Internet website shall include the DIR Administrative Fee.
- R. **Change In Contractor Representatives.** Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Contract. DIR reserves the right to request a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the DIR, serving the needs of the State of Texas and the QOEs adequately.
- S. **Confidentiality.** Contractor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Contractor also acknowledges that DIR will comply with the Public Information Act and with all opinions of the Texas Attorney Generals' office concerning this Act.

Under the terms of this Contract DIR may provide Contractor with information related to DIR QOEs. Contractor shall comply with all DIR Privacy Policy Guidelines, including, but not limited to, the requirement that Contractor shall not re-sell or otherwise distribute or release to any party in any manner DIR or QOEs' information.

- T. **FCC Certification.** Contractor agrees that machines supplied by Contractor comply with applicable FCC regulations.
- U. **Survival.** Warranty and Service agreements that were entered into between Contractor and a QOEs under the terms and conditions of this Contract shall survive the termination of this Contract.
- V. **Notification.** Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To DIR:	To Contractor:
Bill Peek	
P.O. Box 13564	
Austin, Texas 78711	

Either party may change its representative or address above by written notice.

W. Administration Reporting and Fees. Contractor agrees to provide monthly Contract utilization reports to the Contract Administrator in accordance with the following schedule. The reports will be due five business days after the end of each month.

- a) A monthly report shall state the sales under the contract for the period. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated Administrative Fee.
- b) A detail sales report will be issued monthly that includes no less than each QOE's, Order Date, Ship Date, Manufacturer, Quantity, QOE's Price, Extended Price, MSRP, QOE's Purchase Order Number, Shipping Address, and other information as required by DIR.
- c) Reports as required by DIR that will reflect the amount of work being subcontracted to Historically Underutilized Businesses, as defined by Texas State law.

All reports are to be submitted electronically as defined by DIR.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the Contract or termination of the Contract for cause. Contractor's liability for any breach of this Section shall not under any circumstances exceed the amount of Administrative Fees owed to DIR by Contractor.

- X. **Contractor Certifications** . Contractor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under § 31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; and (v) during the term of this Contract, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.
- Y. **DIR Logo**. Contractor may use the DIR logo in the promotion of this Contract to QOEs with the following stipulations:
- a) The logo may not be modified in any way;
 - b) When displayed, the size of the DIR logo must be equal to or smaller than the Contractor logo;
 - c) The sole use of the DIR logo will be to communicate the availability of Software and Services available under this Contract to QOEs; and
 - d) Any other use of the DIR logo requires prior written permission from DIR.
- Z. **Technology Access, as required by § 2157.005, Texas Government Code**. The Contractor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Contractor represents and warrants to DIR and each QOEs purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts

used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

- AA. **Commodity Software.** Texas Government Code, § 2157.068 requires State Agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Contractor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available.
- BB. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used to attempt to resolve any claim for breach of contract made by the Contractor that is not resolved in the ordinary course of business.
- CC. **Preference to Texas Products.** Vendor agrees to comply with Sections 2155.444 and 2155.4441, Texas Government Code.
- DD. **Training.** The Contractor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin area at times acceptable to DIR.
- EE. **Ability to Conduct Business in Texas.** The Contractor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.
- FF. **Payment of Debts owed the State.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, in accordance with § 403.055(h), Texas Government Code, any payments Contractor is owed under this Contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

GG. Vendor is QISV. Contractor is a "Qualified Information Systems Contractor" as defined in § 2157.001, Texas Government Code. All Information Resources Technologies offered to QOE's under this Contract are listed in Contractor's catalogue on file with the General Services Commission.

HH. Suit Or Pending Proceedings. To the best of the Contractor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Contractor, which if determined adversely to the Contractor will have a material adverse effect on the ability of the Contractor to fulfill its obligations under the Contract.

II. Trade Shows. Vendor understands and agrees that it must participate fully by providing a staffed booth display or similar presence at no less than two trade shows or similar functions sponsored by DIR each calendar year, at Vendor's expense. Vendor agrees to display the DIR logo at all trade shows directed toward entities that qualify as DIR customers.

JJ. Shipment and Risk of Loss. The QOE may request expedited shipping for an additional charge.

KK. Impracticability of Performance. A QOE may terminate a Purchase Order for convenience under Article IX B., if it is determined by the QOE that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the QOE.

Equipment Purchase			
Equipment Manufacturer			
PolyCom			
ViewStation - H.323, 128, 512, MP, V.35			
ViewStation 4000 H.323, V.35, PRI	43%	N/A	0%
ViewStation SP 128, 512	20%	N/A	0%
ViaVideo	25%	N/A	0%
Education Packages (S,M,L)	15%	N/A	0%
Services/Warranty	0%	N/A	0%
ViewStation MP DCP, H.323	30%	N/A	0%
VTEL			
Discount for Galaxy RL & XL Enhancement Pkgs, ESA TC2000 & LC5000 Enhancement Pkgs, H.320 MCUs.	36%	0%	0%
Discount for Galaxy PL, Galaxy SL, Galaxy CL systems, ESA Platforms, ESA Single Carted Systems, ESA Model 50, SVN.M.	25%	0%	0%
Discount for Galaxy MT, H.323 MCUs, Gateways, Encounter	15%	0%	0%
Discount for all system options & field upgrades, Galaxy CL-100 Enhancement Package, Galaxy CL-200 Enhancement Package.	5%	0%	0%
Services/Warranty	0%	0%	0%

* Please note that the Galaxy nomenclature has changed:

Galaxy PL	Galaxy Platform System
Galaxy MT	Galaxy MiniTower
Galaxy SL	Galaxy Single Carted System (formerly Galaxy 755)
Galaxy RL	Galaxy RL Enhancement Package (formerly Galaxy 2500 enhancement)
Galaxy XL	Galaxy XL Enhancement Package (formerly Galaxy 5500 enhancement)
Galaxy CL	Galaxy Classroom System

Equipment Purchase			
Equipment Manufacturer			
Adtran			
Multiplexing products	30%	30%	0%
Accessories Accessories Accessories	10%	10%	0%
Alcatel/Newbridge			
Access Switch Products	35%	35%	0%
OmniSwitch/OmniCore Products	35%	**PS	0%
Optical Transport Products	25%	0%	0%
** PS (Product Specific with discounts from 10-35%)			
Check Point		N/A	7%
Cisco		36%	36%
Fujitsu		25%	25%
Kentrox		35%	35%
Accessories	10%	10%	0%
Larscom			
Access-T Products	28%	28%	0%
Orion Products	17%	17%	0%
Accessories	17%	17%	0%
Lucent			
Sonet Packages	25%	25%	0%
Newbridge Networks		SEE ALCATEL LISTING ABOVE	
Nortel Networks (Bay Networks)		35%	35%
PictureTel			
PT 680, 960, 970			
ACCORD MGC 50, 100	35%	N/A	0%
Miscellaneous add-ons and Peripherals	10%	N/A	0%
Upgrades and other add-ons	15%	N/A	0%
Team Station 128, 384	30%	N/A	0%
Live LAN, Live Share & Live Manager	32%	N/A	0%